ATTACHMENT B

STAFF'S ARGUMENT

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STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Patricia L. Cornely (Respondent) established her membership in CalPERS through employment at Foothill DeAnza Community College District as a classified employee beginning May 1, 1999. In 2003, she was employed as a part-time certificated faculty member, and requested that her retirement contributions for both classified work and certificated work be made to CalPERS.

This case concerns Respondent's purchase of additional retirement service credits (ARSC) in 2013. On December 15, 2012, Respondent submitted a Request for Service Credit Cost Information – ARSC, stating she wanted to purchase five years of ARSC.

On May 2, 2013, CalPERS mailed an ARSC Confirmation of Intent Election Packet to Respondent, stating that the cost to purchase five years of ARSC was $152,652; and four years cost $122,122. After receiving the packet, Respondent raised concerns about the cost calculations, stating that the base pay rate used to calculate the cost of ARSC was higher than the payrate used to calculate her Service Prior to Membership Election. Respondent met with regional office staff, the payrate was reviewed and CalPERS informed Respondent the payrate and ARSC calculation was correct.

Respondent submitted her election form and purchased four years of ARSC for a lump-sum payment of $122,122 in July 2013.

Respondent retired for service effective December 30, 2014, and she has been receiving her monthly benefits since then.

The passage of Senate Bill 525 in 2017 (codified as Government (Gov.) Code section 20309.7), allowed people in Respondent's position to have prior certificated work for school employers credited to CalPERS. CalPERS included her certificated compensation into her retirement calculations.

On September 30, 2019, CalPERS informed Respondent that after review of her original ARSC purchase and recent payroll updates, CalPERS would allow her to purchase one additional year (a fifth year) of service credit for ARSC.

On November 15, 2019, CalPERS informed Respondent that the costs for purchase of ARSC had been recalculated. The letter noted that she had purchased four years of ARSC in 2013 for $122,122. Due to payroll corrections, her ARSC purchase price was recalculated. The correct cost to purchase four years was reduced to $90,050, and cost for five years was reduced to $112,562.

Respondent corresponded with CalPERS regarding the recalculated purchase price. She stated that the amount she paid for four years in 2013 ($122,122) was more than sufficient to cover the recalculated price for five years ($112,562). She requested further answers regarding how the additional year of ARSC would be applied retroactively, how the interest was calculated, how it would affect her retirement benefits if she purchased the additional year, any refund she would be owed, and how much interest she would receive on the overpayment.

On December 13, 2019, CalPERS informed Respondent that the fifth year would be applied retroactively, and provided recalculated purchase figures ($86,459 for four years; and $108,074 for five years). The cost to purchase the additional fifth year was an additional $35,635, which represented the difference between what Respondent had paid in 2013 for four years based on old calculations and the new cost for five years plus interest from 2013 through 2019. CalPERS explained that if she did nothing, CalPERS would refund her the overpayment on her 2013 purchase of four years, without interest.

Respondent objected to the assessment of interest on the additional fifth year and requested it be waived. On January 6, 2020, CalPERS mailed Respondent a letter stating that the interest could not be waived and that the overpayment on the four years would be refunded.

Respondent appealed CalPERS' determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on June 24, 2021. Respondent represented herself at the hearing. Foothill DeAnza Community College did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

CalPERS argued at hearing that the erroneous calculation of the 2013 ARSC costs was due to incorrect payroll information reported to CalPERS by Foothill DeAnza Community College, which was not discovered until corrected information was reported in 2019. CalPERS presented testimony regarding ARSC cost calculations generally, the history of calculations for Respondent, and CalPERS' communications with Respondent regarding her purchase of ARSC. CalPERS' representative explained that the cost to purchase ARSC is determined using the present-value method based on the highest pay rate within 36 months of the request. Because only the member, and not the employer, pays contributions for these years of service credit, ARSC is funded at the front end by including interest.

Respondent testified on her own behalf. Respondent expressed her frustration regarding the uncertainty over her membership, and the length of time it took to resolve issues about her payrate calculations and benefits. She testified about being overcharged for her purchase of four years of ARSC, and argued the amount she paid in 2013 was sufficient to cover the correct cost for the fifth year had it been correctly calculated in 2013. She testified that she originally requested to purchase five years, but the incorrect calculations caused her to be able to afford only four. She noted that CalPERS had the use of the overpaid funds from 2013 until 2020, and that the Public Employees' Retirement Fund earned investment returns during that time. She also contended that Gov. Code section 20160 provides a mechanism for CalPERS to correct her election, to show she had paid sufficient funds in 2013 to cover the corrected cost of five years of ARSC.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found it is undisputed that Respondent's cost to purchase ARSC was based on incorrect payroll information. Gov. Code section 20160 requires correction of the error. Gov. Code section 21052 requires that ARSC cost calculations be made using the payrate and other factors affecting liability on the date of the costing request, which in this case is May 2013. The ALJ disagreed with CalPERS' contention that to fully fund the liability, interest must be assessed on the cost to purchase the fifth year of ARSC. The ALJ reasoned that Respondent's lump-sum purchase of four years of ARSC in 2013, and the amount she paid for those four years, exceeded the corrected five-year cost. CalPERS had the benefit of Respondent's ARSC overpayment from 2013-2020, and it earned interest on that money during that time. In light of these facts and the mandate in Gov. Code section 20160, the ALJ found Respondent's contentions were correct. Her payment in 2013 was sufficient to fund all five years of ARSC at the correct price, and no additional interest should be assessed on her purchase of an additional fifth year.

In the Proposed Decision, the ALJ granted Respondent's appeal. CalPERS was ordered to allow Respondent the opportunity to make an amended election to purchase the fifth year of ARSC based on the recalculated cost as of her original election in 2013, without assessing interest from 2013 forward.

Although CalPERS does not agree with the reasoning of the ALJ, based on all the facts and circumstances of this case, staff does not oppose adoption of the Proposed Decision.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

September 15, 2021

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Elizabeth Yelland
Assistant Chief Counsel